

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND
Resolution No. 2009-74

Resolution of the County Commissioners of Charles County, Maryland, approving the development of housing in Charles County, Maryland to be financed either directly by the Department of Housing and Community Development (the "Department") of the State of Maryland or through the Department's Community Development Administration (the "Administration").

WHEREAS, the County Commissioners of Charles County, Maryland recognize that there is a significant need for decent, safe and sanitary housing in Charles County for families of low or limited incomes; and

WHEREAS, MBI Development Company, Inc., a Pennsylvania corporation, or its affiliate, proposes to develop and operate a rental housing development comprised of approximately 60 units known as Astor House (the "Project") and located on Moses Way and described more particularly as lot 11, Waldorf, Maryland 20602, being 5.5 acres more or less and depicted as parcel 56, on the Charles County Tax Map 15, all or a portion of which will assist senior persons of low or limited income as required by applicable law or regulations; and

WHEREAS, the Department either directly or through the Administration, may provide some or all of the financing for the Project (the "Project Financing") in order to assist in making it financially feasible; and

WHEREAS, the applicable law, regulations and Departmental requirements necessitate approval of the Project and the Project Financing by the County Commissioners of Charles County, Maryland, and, where appropriate, by the chief elected official of the local subdivision.

NOW THEREFORE, BE IT RESOLVED THAT, the County Commissioners of Charles County, Maryland hereby support the project on the proposed site; and

HEREBY requests the approval of the Project Financing; and

HEREBY provides financial support for the Project in the form of an agreement for payment in lieu of taxes; and

BE IT FURTHER RESOLVED THAT, the County Commissioners of Charles County, Maryland be and are hereby requested to endorse this Resolution, thereby indicating their approval thereof; and

BE IT FURTHER RESOLVED THAT, copies of this Resolution be sent to the Secretary of Housing and Community Development of the State of Maryland.

AND IT IS FURTHER RESOLVED that this Resolution shall take effect on the 30th day of September, 2009.

County Commissioners of
Charles County, Maryland


Wayne Cooper, President


Edith J. Patterson, Vice President


Reuben B. Collins, II


Samuel N. Graves, Jr.


Gary V. Hodge

ATTEST:


Denise Ferguson, Clerk

CERTIFICATE

I HEREBY CERTIFY that I am the duly appointed Clerk to the County Commissioners of Charles County, Maryland, and that the foregoing Resolution No. 2009-74 was duly adopted by the County Commissioners of Charles County, Maryland on this 30th day of September 2009, in public session on a regular meeting day at which meeting a quorum was present.


Denise Ferguson, Clerk

AGREEMENT

THIS AGREEMENT is made this 31st day of September, 2009, by and between the County Commissioners of Charles County, Maryland (hereinafter "County") and MBI Development Company, Inc., a Pennsylvania corporation, (hereinafter "MBI Development") and the WALDORF JAYCEES FOUNDATION, INC, a Maryland Non-Profit Corporation, (hereinafter the "Jaycees").

WHEREAS, MBI Development owns certain real property located in Charles County, Maryland, as described in a Deed dated _____ and recorded in the Land Records of Charles County at Liber _____, folio _____; and

WHEREAS, MBI Development intends to develop a 60-unit mid-rise apartment building known as Astor House on this property as an enterprise to provide housing for low income seniors. (The property and building hereinafter collectively "Astor House").

NOW THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein, it is hereby agreed by and between the parties as follows:

Pursuant to provisions of the Constitution of the State of Maryland, §7-502 of Tax Property Article of the Annotated Code of Maryland and §12-104 of Housing & Community Development Article of the Annotated Code of Maryland, the Astor House property, in the tax year it is issued a final permanent use and occupancy permit for the building and for nine years thereafter, shall be subject to a credit against Charles County property taxes of \$300.00 per unit for 60 units provided that:

1. MBI Development shall make annual payments of real property taxes to the County. Each annual payment of real property taxes shall be due and payable in accordance with all laws and procedures now in effect or which may be in effect hereafter. The annual payment of taxes shall be reduced by \$300.00 per unit for 60 units for ten years. MBI Development shall make payment to the County of the appropriate amount of property taxes due and owing to the State of Maryland which is collected by the County on its behalf, since this Agreement does not affect taxes owed to the State. This Agreement shall be null and void if MBI Development fails to make payment to the County of the real property taxes due to it, or fails to make payment of the appropriate amount of property taxes due and owing the State of Maryland.

2. MBI Development agrees shall not transfer, convey, assign, lease, sell or otherwise dispose of any of its interest in Astor House, except to an entity which qualifies for an exemption in accordance with provisions of §7-502 of Tax Property Article of the Annotated Code of Maryland and/or §12-104 of Housing & Community Development Article of the Annotated Code of Maryland.

- (a) MBI Development further agrees that all obligations assumed by it under this Agreement shall be binding upon it, its successors and upon any and all successor owners of record of all or any portion of the Astor House. To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, MBI Development agrees that

it shall:

1. Have this Agreement recorded among the Land Records of Charles County within 20 days after the effective date of this Agreement;
2. Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the effective date of this Agreement for the sale of all the Astor House; and
3. Prior to the transfer of all or any portion of the Astor House or any legal or equitable interest therein, require the transferee of said portion of the Astor House to execute an enforceable written agreement, in a form reasonably satisfactory to the County Attorney, agreeing to be bound by the provisions of this Agreement.

(c) MBI Development agrees that any transfer of all or any portion of the Astor House is subject to County review and approval. MBI Development agrees to notify the County, in writing, at least 30 days prior to any date upon which MBI Development transfers a legal or beneficial interest in any portion of the Astor House, other than mortgages or deeds of trust, or leases for the rental of apartment units.

(d) The parties agree that it is the intent of the owner to form a separate legal entity which will consist of a partnership between MBI Development and the Waldorf Jaycees to own, operate and manage the Astor House. Further said entity will which qualify for an exemption in accordance with provisions of §7-502 of Tax Property Article of the Annotated Code of Maryland and/or §12-104 of Housing & Community Development Article of the Annotated Code of Maryland.

(e) Notwithstanding anything to the contrary, MBI Development may execute and enter into mortgages or deeds of trust, or into leases for the rental of apartment units.

3. MBI Development, its successors and assigns, shall make all of its financial records available when requested to do so by the County Commissioners of Charles County or its authorized representatives or employees. In addition, by April 30, 2010, and every year thereafter during the term of this Agreement, MBI Development shall submit to the County complete audited financial reports for Astor House and projection of income and expenses for the next year. If, based on a review of the audited financial reports and the projections for MBI Development, the County determines that there is any net cash from the operation of Astor House after payment of all expenses (including but not limited to reimbursement of all certified development and construction costs, management fees, debt service, investor servicing fees, and anticipated costs to meet the physical and social needs of Astor House) and a five percent (5%) return on equity investment, then the Owner may be required to apply such net cash toward the taxes that otherwise would have been paid based on the assessment for Charles County's real property taxes for Astor House.

4. If MBI Development shall file for bankruptcy under the Bankruptcy Code or make an assignment for the benefit of creditors, or foreclosure proceedings are commenced on Astor House, this Agreement shall be null and void.

5. MBI Development agrees to maintain Astor House for a period of not less than fifteen years for individuals sixty-two years of age or older, whose gross annual household income does not exceed 60 percent of the area median income adjusted for household size as determined from time to time by the United States Department of Housing and Urban Development. Astor House shall be restricted by deed to the residency of individuals' age 62 or older and further restricted by deed to exclude school age children from residing on the property.

6. MBI Development shall, on or before the first day of June of each calendar year, submit to the County an affidavit certifying that it is in compliance with all provisions of this Agreement, and a request for the continuation of the tax credit for the forthcoming tax year. In the event that this affidavit and request are not received by the County as provided in this Agreement and after notice and an opportunity to cure, the County may consider this Agreement in default and discontinue the tax credit.

7. Except for specific exemptions or reductions which may be approved by the County Commissioners on a case by case basis, this Agreement shall not affect and MBI Development shall not be exempt from the payment of all charges of general application, including but not limited to the following, according to the rate schedules from time to time in effect:

a. Usual and ordinary charges or assessments made by County or the State of Maryland for the installation or furnishing of public facilities, including, but not limited to, hookup or installation charges, water, sewer, electric charges, and environmental service charges.

b. Usual and ordinary charges or assessments for water, sewer, electricity, and other utilities.

c. Standard fees for building, plumbing, electric and other required permits.

8. This Agreement shall apply only to all sixty (60) rental units in the Astor House apartment building.

9. Unless this Agreement becomes null and void as provided herein or otherwise by operation of law, this Agreement shall remain in effect for a period of 10 years, or as long as Astor House continues to serve low and moderate income senior citizens, whichever is shorter. Cumulative deferred taxes are payable immediately if any units are changed from affordable senior housing. Cumulative deferred taxes means any credits against real property given on any and all units in Astor House during the effective period of the Agreement.

10. This Agreement is contingent upon receipt by the County of verification of MBI Development's compliance with any and all loan and related documents with the State of Maryland.

11. This Agreement shall constitute the entire agreement between the parties. It shall not be modified, amended, altered, or terminated except in writings signed by both parties. The parties

agree that there are no representations, agreements, arrangements or understandings between the parties, either verbal or written, which relate to the subject matter of this Agreement except those which are expressed herein.

12. The parties agree that their agents, servants, successors, and assigns shall be bound by the terms of this Agreement.

13. This Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws in force in the State of Maryland.


30th 14. The parties agree that this Agreement shall be adopted and be effective the day of September, 2009.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, affix their signatures and seals.

ATTEST:



COUNTY COMMISSIONERS
Of CHARLES COUNTY, MARYLAND

By:  (SEAL)
Wayne Cooper, President

ATTEST:

MBI DEVELOPMENT COMPANY, INC.

By: _____ (SEAL)
Brad Ingerman

ATTEST:

WALDORF JAYCEES FOUNDATION, INC.

By: _____ (SEAL)
Dick Gregory, President